

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-133-C - ORDER NO. 2004-449
SEPTEMBER 27, 2004

IN RE: Application of Tel West Communications, LLC to Approve Transfer of Assets and Transfer of Certificate of Public Convenience and Necessity of HTR&L Enterprises, Inc. d/b/a Hart Communications to Tel West Communications, LLC.)	ORDER GRANTING MOTION FOR EXPEDITED REVIEW AND TRANSFER OF ASSETS AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
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This matter comes before the Public Service Commission of South Carolina (“Commission”) pursuant to the Application of Tel West Communications, LLC (“Tel West” of the “Applicant”) to transfer the South Carolina assets and Certificate of Public Convenience and Necessity (“PCN”) from HTR&L Enterprises, Inc. d/b/a Hart Communications (“Hart”). The Application was filed pursuant to S.C. Code Ann. Section 58-9-280(B) (Supp. 2003) and the applicable regulations of the Commission. Subsequent to the filing of the Application, Tel West requested expedited review and disposition of the Application.

Tel West is an Arizona corporation with its principle place of business located at 3701 S. Norfolk Street, Seattle, Washington and is authorized to do business in the State of South Carolina. Tel West began providing local exchange service to the former customers of Hart in South Carolina since the acquisition of Hart’s assets in September, 2001. Hart was authorized to provide local exchange services in South Carolina in Order

No. 97-814 (Docket No. 97-230-C). Tel West advised the Commission Staff of its acquisition of Hart's customer base in South Carolina in 2002 but received no response to its request for assistance in determining the appropriate paperwork which needed to be filed with the Commission to transfer Hart's assets to Tel West. Since its acquisition of Hart, Tel West has submitted all required reports and fees to the Commission and has entered into several interconnection agreements with Incumbent Local Exchange Carriers ("ILECs") in South Carolina which the Commission has approved in Docket Nos. 2001-362-C and 2001-413-C. Tel West currently provides service to approximately 1,400 customers in South Carolina and does so on a resale basis. Tel West does not operate any facilities in South Carolina and has no business offices or employees in this state. Tel West filed the current Application with the Commission on May 11, 2004.

By letter dated May 28, 2004, the Commission's Executive Director instructed the Applicant to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The Applicant filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director.

MOTION FOR EXPEDITED REVIEW

Tel West filed a Motion for Expedited Review of its Application on or about July 28, 2004. In furtherance of the request for expedited review, Tel West filed verified testimony of James G. Schrank in support of the Application. After Tel West filed its

Motion for Expedited Review with the accompanying verified testimony, the Commission Staff brought the matter to the Commission for consideration.

Upon consideration of Tel West's request for expedited review, the Commission finds that expedited review should be granted. By its request, Tel West waived its right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicant made a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present at a hearing on this matter.

EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY

According to the Application, Tel West is requesting authority from the Commission to transfer certain assets and related transactions and a waiver of applicable anti-slamming regulations. Tel West filed the verified testimony of James G. Schrank, Comptroller for Tel West.

Tel West is an Arizona corporation and is headquartered in Seattle, Washington. It is authorized as a foreign corporation to do business in the State of South Carolina. Tel West does not hold a Certificate of Public Convenience and Necessity from this Commission to provide any telecommunications services in the State of South Carolina but asks as a part of this Application that the Certificate of PCN of Hart be transferred to

Tel West along with the assets of Hart. Hart was issued a Certificate of PCN by this Commission to provide local exchange services in South Carolina in Order No. 97-814 in Docket No. 97-230-C.

As Comptroller, Mr. Schrank oversees all aspects of Tel West's financial and business affairs, which includes negotiation and documentation of equity and debt financing, contract negotiations and enforcement; including interconnection agreements with incumbent carriers and other telecommunications providers. He was involved in Tel West's purchase of Hart's assets in South Carolina in 2001. Mr. Schrank presented testimony regarding the proposed purchase by Tel West of Hart's assets as well as the seamless transition of customers which took place in 2001 as a result of this transaction.

Regarding the sale and transfer of assets and services, Tel West acquired Hart in September 2001 and has been providing service to the former customers of Hart since that time. Tel West today provides resold residential telephone service to approximately 1,200 residential customers in South Carolina and operates under resale agreements with several incumbent local exchange carriers in South Carolina, including BellSouth, Verizon, Sprint, Farmers Telephone Cooperative and Horry Telephone Cooperative.

Mr. Schrank testified that Tel West will continue to make every effort to comply with the all state regulations and believes that the requested transfer of assets and transfer of the Certificate of PCN are in the public interest.

Upon review and consideration of the Application, the verified testimony of Mr. Schrank, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Tel West is a corporation organized under the laws of the State of Arizona and headquartered in the State of Washington. Tel West is authorized to do business in South Carolina by the South Carolina Secretary of State. Hart was granted a Certificate of Public Convenience and Necessity to provide intrastate resold telecommunications services within the State of South Carolina on September 18, 1997, in Commission Order No. 97-814.

2. Tel West acquired Hart in September 2001 and has been providing telecommunications services in South Carolina since that time. On at least two occasions, in 2001 and 2002, Tel West contacted the Commission Staff to inform the Commission of its acquisition of Hart. The Commission has approved resale agreements between Tel West and several incumbent local exchange carriers in South Carolina, including BellSouth, Verizon, Sprint, Farmers Telephone Cooperative, and Horry Telephone Cooperative.

3. The Commission finds that Tel West has and intends to continue to comply with all rate designations, regulatory schemes, and tariff restrictions and requirements.

4. The Commission finds that Tel West will support universally available telephone service at affordable rates.

5. The Commission finds that Tel West has and will continue to provide services which will meet the service standards of the Commission.

6. The Commission finds that the provision of intrastate interexchange telecommunications service by Tel West "does not otherwise adversely impact the public interest."

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission approves the transfer of assets and Certificate of Public Convenience and Necessity between Hart and Tel West.

2. Tel West shall continue to resell or utilize the services or facilities of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

3. Tel West shall continue to conduct its business in compliance with Commission decisions and Orders, both past and future.

4. Tel West shall continue to file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Tel West shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's website at www.psc.state.sc.us/forms/default.htm. This form is entitled "Annual Report for Competitive Local Exchange Carriers" and consists of four pages. Additionally, Tel West shall file with the Commission a quarterly report entitled "CLEC

Service Quality Quarterly Report.” The proper form for this report is found on the Commission’s website at www.psc.state.sc.us/forms/default.htm.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O’Neal Hamilton, Vice Chairman

(SEAL)